

HOUSE BILL 2215  
By Jones R (Shel)

AN ACT to amend Tennessee Code Annotated, Title 47, Chapter 25, to enact the Fairness in Music Licensing Act of 1996, relative to the securing and enforcement of certain copyright licenses and royalty contract agreements by performing rights societies.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Title 47, Chapter 25 is hereby amended by adding Sections 2 through 16 as a new part:

SECTION 2. This act may be cited as the "Fairness in Music Licensing Act of 1996".

SECTION 3. The legislature finds and declares that:

(a) Under the copyright laws of the United States, a copyright owner may enforce the rights thereof against the owners of restaurants, bars, retail establishments, entertainment and sports facilities, doctors' and other professionals' offices, and similar places of business where members of the public may assemble, for the public performance of music and other similar copyrighted works, whether it be in person by a performing artist hired by the proprietor, or on radio stations or other electronic media transmitted, received and rebroadcast by the proprietor at those places of business;

(b) The proprietors of such establishments are frequently subject to arbitrary and capricious enforcement and collection practices by the owners of these copyrights or their agents who may enter the premises without identification and question employees; collect fees on an irregular basis; arbitrarily increase and charge fees in excess of those agreed to by the

proprietors under existing contracts; or charge similar businesses vastly differing fees for essentially the same use of copyrighted works;

(c) These proprietors, usually small businessmen and women who through their businesses and professions contribute to the economy of this state and employ its citizens, recognize the copyright laws of the United States and the purposes for which they were enacted and should be enforced and acknowledge their obligations thereunder for use of copyrighted works in their places of business;

(d) Nevertheless, these proprietors are entitled to certain safeguards in the operation of their businesses, which will protect them from such arbitrary, capricious and unfair trade practices, permit them to negotiate fairly with the copyright owners or their agents in arriving at appropriate terms and conditions for the use of the copyrighted work in their places of business, and thereafter will assure them, with some reasonable degree of certainty, the ability to ascertain their true obligations and rights in the future use of such copyrighted work;

(e) Although the rights and responsibilities regarding copyrighted works are founded in Article I, Section VIII, clause 8, of the United States Constitution and exclusively governed by Title 17 of the United States Code, it is nonetheless essential that the state of Tennessee protect its business owners and citizens from the practices of those who would enforce their rights under the federal law in an arbitrary and capricious manner; and

(f) It is therefore in the best interests of the state, its business community and consumers alike, that such arbitrary, capricious and unfair trade practices be prohibited and the agreements under which such rights and responsibilities are established be regulated by this state.

#### SECTION 4. As used in this act:

(1) "Area" or "areas" means a circular geographical region having a twenty-five (25) mile radius surrounding the business location of a proprietor. In the case of a proprietor with more than one (1) business location, there shall be a separate area for each location for the purposes of this act.

(2) "Copyright owner" means the owner of a copyright of a nondramatic musical or similar work recognized and enforceable under the copyright laws of the United States pursuant to Title 17 of the United States Code, Pub. L. 94-553 (17 U.S.C. §101 et seq.).

(3) "Performing rights society" means an association or corporation that licenses the public performance of nondramatic musical works on behalf of copyright owners, such as the American Society of Composers, Authors and Publishers (ASCAP), Broadcast Music, Inc. (BMI), and SESAC, Inc. The "repertoire" of a performing rights society consists of those works for which the society provides licenses on behalf of the owners of copyright in the works.

(4) "Proprietor" means the owner of a retail establishment, restaurant, inn, bar, tavern, sports or entertainment facility, or any other similar place of business or professional office located in this state in which the public may assemble and in which nondramatic musical works or similar copyrighted works may be performed, broadcast, or otherwise transmitted for the enjoyment of the members of the public there assembled. For purposes of this paragraph, transmissions within a single commercial establishment or within establishments under common ownership or control are not transmissions to the general public.

(5) "Royalty" or "royalties" means the fees payable to a copyright owner or performing rights society for the public performance of nondramatic musical or other similar work.

SECTION 5. No copyright owner or performing rights society shall enter into, or offer to enter into, a contract for the payment of royalties by a proprietor unless, at the time of the offer, or any time thereafter, but no later than seventy-two (72) hours prior to the execution of that contract, it provides to the proprietor, in writing, the following:

- (a) A schedule of the rates and terms of royalties under the contract;
- (b) A schedule of the rates and terms of royalties under agreements executed by the copyright owner or performing rights society and proprietors of comparable businesses in the area;
- (c) In the case of a performing rights society, the copyright owners represented by that society and the works licensed under the contract; and

(d) Notice, in a form prescribed by the attorney general, that the proprietor is entitled to the information contained in subsections (a) (b) and (c) of this section, and that the failure of the copyright owner or performing rights society to provide that information is a violation of, and may render a contract unenforceable under, the provisions of this act.

SECTION 6. Every contract for the payment of royalties executed in this state shall:

- (a) Be in writing;
- (b) Be signed by the parties;
- (c) Not exceed one year; and
- (d) Include at least the following information:
  - (1) The proprietor's name and business address and the name and location of each place of business to which the contract applies;
  - (2) The name and address of the copyright owner and any performing rights society authorized by him to act on his behalf;
  - (3) The copyrighted works licensed under the contract;
  - (4) The duration of the contract; and
  - (5) The schedule of rates and terms of the royalties to be collected under the contract, including any sliding scale or schedule for any increase or decrease of those rates for the duration of that contract.

SECTION 7. No copyright owner or performing rights society, or any agent or employee thereof shall:

- (a) Enter onto the premises of a proprietor's business for the purpose of investigating as to the use of copyrighted works by that proprietor without first identifying himself to the proprietor or his employees and making known to them the purpose of the investigation;
- (b) Collect or attempt to collect a royalty payment or any other fee except as provided in a contract executed pursuant to the provisions of this act; or

(c) Use or attempt to use any act or practice in negotiating with a proprietor, or in retaliation for a proprietor's failure or refusal to negotiate, with respect to a contract for the payment of royalties, including, but not limited to:

- (1) Threatening to commence legal proceedings in connection with an alleged copyright violation with the intent of coercing the proprietor to negotiate or enter into a contract for the payment of royalties; and
- (2) Charging or collecting a royalty which is unreasonable in comparison to the royalties for similar licenses in the same area.

SECTION 8. A person who violates any of the provisions of this act shall be liable for a civil penalty of not more than five thousand dollars (\$5,000) for a first violation and not more than ten thousand dollars (\$10,000) for a second and each subsequent violation. The civil penalty shall be collected and enforced in the name of the state by the attorney general and reporter in a circuit court.

SECTION 9. A proprietor may bring an action or assert a counterclaim, in a court of competent jurisdiction, against a copyright owner or performing rights society, or both, to enjoin any violation of this act and to recover any damages sustained by the proprietor as a result of a violation of this act. The proprietor may petition the court to terminate a contract which violates the provisions of this act and the court, in its discretion, may void the contract. If successful, the proprietor shall be entitled to recover three (3) times the damages sustained, together with reasonable attorney's fees, filing fees and reasonable costs of suit, in addition to any other legal or equitable relief.

SECTION 10. (a) (1) Each performing rights society shall make available, free of charge, to all interested persons, on-line computer access to copyright and licensing information for each work in its repertoire. Such access shall, for each such musical work, identify the work by title of the work, the name, address, and telephone number of both the author and the copyright owner, when the work will enter the public domain, and the names of any artists known to have

performed the work. Such on-line computer access shall permit the efficient review of multiple musical works consistent with reasonably available technology.

(2) Each performing rights society shall make available at no charge, not less frequently than semiannually, a printed directory of each title in its repertoire, as of the date which is not more than thirty (30) days before the date on which the directory is published, containing the information set forth in subdivision (1).

(3) A performing rights society shall, upon the request of any person who performs or may perform musical works in the society's repertoire, provide to that person copies of the documentation establishing the society's right to license the public performance of such musical works.

(4)(A) A performing rights society may not institute or be a party to, or pay the costs of another party in, any action alleging the infringement of the copyright in, or charge a fee under any per programming period license for, any work in that society's repertoire that is not identified and documented as required by subdivisions (1), (2), and (3).

(B) Subdivision (A) shall not apply on the basis of a failure to comply with subdivision (2) with respect to a musical work first entering the society's repertoire within the six (6)-month period beginning thirty (30) days before the date on which the society's last directory was published under subdivision (2), if the society establishes that such musical work was included in the on-line database required by subdivision (1) not less than ten (10) days before the performance giving rise to the alleged infringement or charge.

(b)(1) Each performing rights society shall provide, within five (5) business days after it receives a written request from a licensee of any musical work in the society's repertoire, or from any person that is negotiating to become such a licensee:

(A) A schedule of the society's license rates for those licensees in the same area as the licensee or person making the request, that have characteristics similar to such licensee

or person, except that the society shall provide information with respect to at least five

(5) but not more than ten (10) such licensees;

(B) The formulas by which the rates are derived; and

(C) License terms under agreements executed by the performing rights society and licensees described in subdivision (A).

(2) Each performing rights society shall provide, within five (5) business days after receiving a written request from an entity authorized to negotiate license fees and terms on behalf of any group of persons who perform or may perform musical works within that society's repertoire, copies of all forms of licenses negotiated between that society and other entities authorized to negotiate license fees and terms on behalf of any group of persons who perform musical works in that society's repertoire, except that the society shall not disclose individual licensees' names, addresses, or business confidential information.

SECTION 11. A proprietor, landlord, an organizer or sponsor of a convention, exposition, or meeting, a facility owner, or any other person making space available to another party by contract, shall not be liable under any theory of vicarious or contributory infringement with respect to an infringing public performance of a copyrighted work by a tenant, lessee, subtenant, sublessee, licensee, exhibitor, or other user of such space on the ground that:

(1) A contract for such space provides the landlord, organizer or sponsor, facility owner, or other person a right or ability to control such space and compensation for the use of such space; or

(2) The landlord, organizer or sponsor, facility owner, or other person has or had at the time of the infringing performance actual control over some aspects of the use of such space, if the contract for the use of such space prohibits infringing public performances and the landlord, organizer or sponsor, facility owner, or other person does not exercise control over the selection of works performed.

SECTION 12. This act shall not apply to contracts between copyright owners or performing rights societies and broadcasters licensed by the federal communications commission except that if a copyright owner or performing rights society is licensed by the federal communications commission this act shall apply to contracts between that copyright owner or performing rights society and a proprietor as otherwise provided herein.

SECTION 13. The rights, remedies and prohibitions accorded by the provisions of this act shall be in addition to and cumulative of any other right, remedy or prohibition accorded by common law, federal law or the statutes of this state, and nothing contained herein shall be construed to deny, abrogate or impair any such common law or statutory right, remedy or prohibition. Except as provided in 17 U.S.C. 504(d) (1), nothing herein shall be construed to relieve any performing rights society of any obligation under any consent decree or other court order governing its operation, as such decree or order is in effect on the date of the enactment, as it may be amended after such date, or as it may be issued or agreed to after such date.

SECTION 14. If any provision of this act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to that end the provisions of this act are declared to be severable.

SECTION 15. The provisions of this act are declared to be remedial in nature and all provisions of this act shall be liberally construed to effectuate its purposes.

SECTION 16. This act shall not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before its effective date.

SECTION 17. This act shall take effect on July 1, 1996, the public welfare requiring it.



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